

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32065
Docket No. MS-32730
97-3-96-3-33**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Sabrina McCrae

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"1. That Ms. McCrae was employed by the National Railroad Passenger Corporation from June, 1993 to and including February 2, 1995, when she was disqualified from her position as a Crew Management Representative.

2. That during her probation period, Ms. McCrae had no problems performing her job duties and received good job evaluations from supervisors Patricia Glace, Milton Lundy and Michael Kates. Written copies of the job evaluations were not furnished to the Crew Representatives. Job evaluations were completed while the Crew Representative was present and were shown to the person being evaluated and the evaluation was placed in everyone's individual file.

3. That from September, 1993 to the time of her disqualification, Ms. McCrae was subjected to severe, excessive and inexcusable harassment by Director, Paul Bello. This harassment stemmed from a grievance, signed by Ms. McCrae and other Crew Management Representatives, protesting the placement of Ms. Teresa Brooks, Crew Management Secretary, in a Crew Management Representative position, causing a displacement in seniority positions for all Crew Management Representatives which were chosen. Ms. Brooks appointment also caused a Crew

Management Representative, Ms. Tammie Pratt, to be furloughed.

4. That Paul Bello, Director-Crew Management Center, violated the civil rights of all African American Crew Management Representatives when he stated: 'If you do not like my decisions, you can leave. I am God. If it were up to me, I would not have brought you here. You are here because I had no choice since you belong to the union.'

5. That the Director of Crew Management Center and the General Chairman of the Transportation Communications Union, Anthony Santoro, agreed upon an arrangement which allowed Ms. Brooks to become a Crew Management Representative even though she was not qualified. Crew Management Representative positions were to be offered to displaced Crew Base personnel and clerks first before positions were offered to other employees. Nepotism was practiced since Ms. Brooks is Mr. Santoro's sister.

6. That Ms. McCrae was constantly called into Mr. Bello's office and received belittling and degrading remarks by the Director. To witness these counseling, a supervisor was present. Harassment was constant and included incidents such as: being required to work alone during a ten hour shift and handle all calls for the entire country alone, when a fellow co-worker started an altercation, he was reprimanded less severely than Ms. McCrae, shift reports of Ms. McCrae's disappeared which made it look as though Ms. McCrae did not complete her job duties, being placed on a faulty phone line and being accused of handling less calls than other co-workers. Ms. McCrae was falsely accused of being rude toward a caller and Paul Bello demanded that a letter of apology be written or termination from her position would follow. Ms. McCrae was told by Paul Bello that her co-workers feared her and that she was un-cooperative to work with.

7. That on February 2, 1995, Ms. McCrae returned to work from using compensatory days, which had accumulated because she was refused any days off that were requested, and was called into the office by Paul Bello. A supervisor was present when Paul Bello engaged in a heated discussion concerning a late arrival. Paul Bello directed me to leave the Center, but decided against the decision after the supervisor announced his needing Ms. McCrae to work.

8. That later that afternoon after taking calls and performing my duties, Ms. McCrae was tapped on the shoulder by Paul Bello and told to come to his office. On this occasion, Ms. McCrae was disqualified and was told to leave the Crew Management Center. Paul Bello did not follow any procedures as outlined in the union contract; in particular holding an investigation. Paul Bello also had not contacted the union and made them aware of his intentions to terminate Ms. McCrae. All counseling and the disqualifications, were performed without Ms. McCrae's ability to be represented by a Union Representative as stipulated in the contract. Paul Bello further violated the contract by not supplying a written document expressing an intent to disqualify Ms. McCrae during the twenty-two days Ms. McCrae was off duty. An unjust treatment hearing was requested by Ms. McCrae in accordance with the contract, and the request was denied by Mr. L. D. Miller, Director of Labor Relations. This action violated the contractual rights of Ms. McCrae.

9. That after the disqualification of Ms. McCrae, Kevin O'Connell was replaced by Anthony Santoro, who proceeded to handle this case. Mr. Santoro did not furnish any grievance documents nor decisions to Ms. McCrae. In December of 1995, Mr. Santoro informed Ms. McCrae that everything had been done and that her case would not be appealed further.

10. That Mr. Santoro never assisted Ms. McCrae in locating another position with the National Railroad Passenger Corporation. Ms. McCrae has been in a non-active status since February of 1995 and has not been assigned to another job that she is qualified to work.

I am requesting reinstatement to my former position as a Crew Management Representative and paid all wages due, from February, 1995 to and including the present time. I am also requesting that all seniority rights be restored and unimpaired."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant in this dispute entered service on August 16, 1979, as a Reservation and Information Clerk. At the time of the instant dispute, she held the appointed position of Crew Management Representative at the Crew Management Center in Baltimore, Maryland. By letter of February 7, 1995, Claimant was notified she was disqualified from her Crew Management position effective February 6, 1995. Claimant's Union Representative requested that the Director of Labor Relations hold an Unjust Treatment Hearing by letter of February 27, 1995. In his denial of the request, the Director pointed out that no rule of the CMR Agreement granted Claimant the right to an Unjust Treatment Hearing. On March 29, 1995, the Union Representative filed a claim with Director Paul Bello of the Crew Management Center seeking Claimant's return to the position of Crew Management Representative and compensation equal to what she could have earned had she not been disqualified from

that position. That claim was denied and subsequently progressed in the usual manner including conference on the property. By letter of January 11, 1996, Claimant served notice that she was filing a Submission with the Board as set forth in her statement. That claim as filed is entirely different from the original claim progressed by the Union on the property.

Claimant's position is clearly set forth in her lengthy Statement of Claim (above). It is the position of the Carrier that such a new claim is not properly before this Board. Before addressing that matter, however, there are other issues in the claim that must be addressed. First, there is no evidence on the record to support Claimant's allegations of harassment. Moreover, in light of the manner in which the Union processed the original grievance, there is not an iota of proof that there was any "conspiracy" between the Union and Carrier against Claimant.

Carrier is correct that the instant matter is improperly before the Board. As we noted in Third Division Award 10873, where the basis for a claim as argued by the petitioner is a departure (in the instant case a great departure) from that offered in support of the claim on the property, it constitutes a new claim and cannot properly be presented, *de novo*, before the Board. Accordingly, the claim must be dismissed.

Having made its finding, however, the Board must make an additional comment concerning the Claimant's present non-active status. It is apparent that Claimant's "non-active" status is of her own making. The record indicates that while Claimant started service with Amtrak on August 16, 1979, as an on-board service attendant (represented by the Amtrak Service Workers Council) she established clerical seniority (represented by the Transportation Communications International Union) on April 28, 1986, as a Reservation and Information Clerk in Chicago. Subsequently, Claimant was promoted to Crew Management Representative (CMR) in Baltimore on June 1, 1993.

In accordance with Rule 2(d) of the parties' January 6, 1993 CMR Agreement, Claimant continued to accumulate seniority on the Chicago clerical seniority roster. When disqualified from the CMR position effective February 6, 1995, Claimant was entitled to exercise Chicago clerical seniority per Rule 22 (c) of the Amtrak-TCU Corporate Agreement by bidding bulletined positions. That option remains open to her.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 10th day of June 1997.